

STATE OF MICHIGAN
COURT OF APPEALS

In re ROLON, Minors.

UNPUBLISHED
December 9, 2014

Nos. 320509/320511
Oakland Circuit Court
Family Division
LC No. 09-756735-NA

Before: JANSEN, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

In these consolidated appeals, the mother of the minor children, E. Rolon, and the father of the minor children, J. Pain, appeal by right the trial court's order terminating their parental rights to their four minor children.¹ We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been proven by clear and convincing evidence and that termination is in the best interests of the child.² The trial court's decision that a statutory ground exists to terminate parental rights is reviewed for clear error.³ A finding is clearly erroneous if, although there is evidence to support it, this Court "on the entire evidence is left with a definite and firm conviction that a mistake has been made."⁴ Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁵

In Docket No. 320509, we conclude that termination of Rolon's parental rights was proper.⁶ To the extent that the trial court also relied on MCL 712A.19b(3)(c)(ii) with regard to

¹ MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).

² MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013).

³ *Moss*, 301 Mich App at 80.

⁴ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁵ MCR 2.613(C); MCR 3.902(A).

⁶ MCL 712A.19b(3)(c)(i), (g), and (j).

Rolon, any error was harmless because only one statutory ground needs to be established to terminate parental rights.⁷

At the time of the adjudication, Rolon was unable to care for the children. Rolon was still not able to care for them at the time of the termination hearing, and would not be able to care for them within a reasonable time. When the children came to the trial court's attention, Rolon's whereabouts were unknown and she had not seen her children from May 2011 through February 2012. Rolon had not been the children's physical custodian and, by the time of the termination hearing, she had not demonstrated that she was a suitable caregiver.

Rolon had severe cognitive impairments, oppositional tendencies, and was unwilling to recognize or address her issues. She had limited ability to parent her children and limited stress tolerance, which was a significant concern given that all four of the children had severe special needs and required added care and patience. Each of the children had therapy appointments and special education services that required extra attention and coordination of care. Moreover, Rolon denied that her children had developmental delays despite significant and obvious evidence to the contrary. The evidence showed that she was easily overwhelmed by the children. She would require full-time, around-the-clock support if she were to parent the children, and no agency could provide this type of support. Rolon's assertions that the Department of Human Services should be held accountable if the parent-agency agreement was inadequate and that she was not given the opportunity to show that she could parent are unpersuasive. There is no evidence that the treatment plan was inadequate; rather, she did not sufficiently benefit from services and it was clear that she could not parent.

Rolon's inability to parent the children was evident given the limited interaction she had with them during visits. The children did not turn to her for support or care and repeatedly checked in with their foster mother during visits, while in Rolon's presence. Rolon never came up with a suitable, concrete plan for the children's return. She was without suitable housing and minimizes the housing issues when she argues that her housing was only unsuitable because the children's maternal grandmother lived with her. The children's maternal grandmother had a history with Children's Protective Services (CPS). Further, the rental agreement Rolon presented to the agency allowed only four occupants, not five as she needed. Thus, given her inability to provide proper care and custody or address the issues that brought the children to the trial court's attention, termination of her parental rights was proper.⁸

Termination of Rolon's parental rights was also proper because there is a reasonable likelihood that the children will be harmed if they were returned to her home. The children would be at risk of harm in Rolon's care because she could not provide appropriate supervision. Her poor judgment caused actual harm to one of the children who, during a supervised visit, got

⁷ See *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

⁸ MCL 712A.19b(3)(c)(i) and (g).

cut on a razor blade that was in Rolon's pocket. This incident demonstrated that, even with supervision, the children were subject to harm in Rolon's care.⁹

In Docket No. 320511, we find that termination of Pain's parental rights was also proper.¹⁰ To the extent that the trial court relied on MCL 712A.19b(3)(c)(ii) with regard to Pain, any error was harmless because only one statutory ground needs to be established.¹¹

At the time the children were removed from his care, Pain was hospitalized and unable to care for the children. He admitted to being a substance abuser and to having a CPS history dating back to 2009, which included domestic violence, neglect, and substance abuse. The evidence did not show that Pain was now able to properly care for the children. Despite Pain's claim that he was taking action to address his drug use, he continued to test positive for marijuana and opiates. Pain was offered 53 drug screens while the children were temporary court wards, but missed 27 screens. Fifteen screens were positive for opiates and five screens were positive for marijuana and adulterants. Pain's claim that his drug use never caused him to be neglectful and that he was not given sufficient opportunity to address his substance abuse is without merit. Pain had ample time to address his substance abuse since 2012, when the children were adjudicated as court wards, but he never did. Moreover, Pain's claim that the children were not neglected because of his drug use is unpersuasive given that drug use would have had to have interfered with his ability to parent by, if nothing else, affecting his ability to manage his own health. Likewise, his claim that he was compliant with his parent-agency agreement lacks merit given that he had not addressed his substance abuse.

Pain also failed to address other components of his treatment plan. He was only partially compliant with the individual therapy. He failed to attend therapy for four months and, while he eventually attended five sessions, he missed the last session. He also never verified his income, claiming that he worked side jobs and was paid in cash. There is no evidence he could meet his children's financial needs with unreliable, inconsistent income.

Pain's commitment to the children was questionable given that he missed half of the parenting time that was available to him. And, while he had been the children's physical custodian at the time of the adjudication, the evidence showed that he did not timely recognize the children's special needs and delayed seeking services for them. Pain was only able to care for the children with the help of his mother, but she had since passed away. These children had special needs and needed extra care and attention. Because they required a caregiver who could coordinate a multitude of therapy appointments without the support and assistance of others, there is no evidence Pain would have been able to care for them on his own. Thus, the trial court did not err in finding that the conditions that led to adjudication continue to exist, and that Pain

⁹ MCL 712A.19b(3)(j).

¹⁰ MCL 712A.19b(3)(c)(i), (g), and (j).

¹¹ See *Powers*, 244 Mich App at 118.

failed to provide proper care and custody, and will be unable to rectify either within a reasonable time considering his children's ages.¹²

Further, the children would be at risk of harm in Pain's care. Pain claims that his unmanaged diabetes, the main issue that brought the children into protective care, was no longer an issue. This claim is misleading. Although there is no evidence that Pain's diabetes was still uncontrolled, the children first came to the court's attention because Pain was unable to care for his own medical issues. The fact that Pain was unable to attend to his own medical needs suggests that he might not be able to care for his children. Given the special needs of the children and their young ages, they would be at risk of harm. Moreover, the fact that Pain neglected to identify his children's delays suggests that he could not adequately handle all of his responsibilities. Pain's substance abuse would also put the children at risk of harm in his care because he could not suitably attend to them while he was using drugs. Therefore, termination of Pain's parental rights because of the reasonable likelihood of harm to the children if returned to Pain was also proper.¹³

Further, we conclude that the trial court did not err in its determination that termination was in the children's best interests.¹⁴ The trial court's determination regarding whether termination is in a child's best interest is also reviewed by this Court for clear error.¹⁵ Although Rolon does not specifically challenge the court's best-interest determination, based on the record as a whole, we hold that the trial court correctly found that termination of both Rolon and Pain's parental rights was in the children's best interests.

Pain argues that his children will be harmed by having their bond with him severed. While there was some evidence of a bond between Pain and his children, any bond they shared was not sufficient to overcome the fact that he could not properly care for the children. Moreover, contrary to Pain's claim, there was no evidence that the children would be harmed if any bond between him and the children was ended. It is in the children's best interests to be raised and cared for by someone who does not abuse drugs and who can meet all of their special needs. Given that Pain has his own demanding medical issues and uses drugs, it would be difficult for him to fully meet the care requirements of his four special needs children. Thus, the

¹² MCL 712A.19b(3)(c)(i) and (g).

¹³ MCL 712A.19b(3)(j).

¹⁴ *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

¹⁵ *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

trial court did not err in its best-interest determination.¹⁶

Affirmed.

/s/ Kathleen Jansen
/s/ Michael J. Talbot
/s/ Deborah A. Servitto

¹⁶ *Olive/Metts Minors*, 297 Mich App at 41-42.